

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BANK OF THE WEST,)
Plaintiff)
v.)
KATHERINE BEESLEY,)
In Personam)
AND)
M/V DEFIANCE, her engines and)
equipment)
In Rem)
Defendants)

RECEIVED
CIVIL ACTION NO.
MAGISTRATE JUDGE Bowler
04 CV 10407 RGS
RECEIPT # 54141
AMOUNT \$ 150-
SUMMONS ISSUED 2
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. 10
DATE 3-1-04

COMPLAINT AND PRAYER FOR *IN REM* ARREST

Now comes the plaintiff by and through its attorneys, Holbrook & Murphy, and proceeds *in rem* against the defendant vessel, M/V DEFIANCE, to enforce a preferred ship mortgage, and *in personam* against defendant, Katherine Beesley, for amounts owed and/or for any deficiency thereof.

JURISDICTION

1. Subject matter jurisdiction of this Honorable Court is based upon 28 U.S.C. sect. 1333 and the Preferred Ship Mortgage Act, as amended and recodified at 46 U.S.C. sect. 31325. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim to enforce a preferred mortgage lien, within the meaning of Rule 9(h) of the Federal Rules of Procedure. The plaintiff, Bank of the West, requests that the special

relief provided in Rule C of the Supplemental Rules for Certain Maritime and Admiralty Claims of the Federal Rules of Civil Procedure be granted with the arrest of the defendant vessel M/V DEFIANCE.

PARTIES

2. Plaintiff, Bank of the West, is a corporation with its principal place of business in California.
3. At all times relevant hereto, plaintiff was, and is still the holder and successor in interest of the various financial instruments described below including a Preferred Ship Mortgage on the M/V DEFIANCE being sued upon in this action.
4. Defendant, M/V DEFIANCE, is a vessel owned by defendant, Katherine Beesley. It is a 38 foot Scarab model vessel which is stored at Beverly Port Marina located in Beverly, Massachusetts and during the pendency of this action will be within the jurisdiction of this Honorable Court.
5. Defendant, Katherine Beesley, is a resident of Marblehead, Massachusetts.
6. At all times relevant hereto the defendant Beesley was, and still is, the owner of the M/V DEFIANCE and the obligor on the financial documents described below.

COUNT I **Enforcement of a Preferred Ship Mortgage** **Against the M/V DEFIANCE *In Rem***

7. Defendant Katherine Beesley entered into a loan agreement with plaintiff Bank of the West, which was secured by the defendant's vessel M/V DEFIANCE where the defendant agreed to pay the principal sum of \$47,491.25 plus interest. This agreement is attached hereto as Exhibit One (1).

8. Defendant Beesley defaulted on the loan issued by Bank of the West.
9. As of this date, the defendant Katherine Beesley owes \$46,974.29 plus interest to Bank of the West pursuant to the loan agreement.
10. The plaintiff, Bank of the West has performed all conditions precedent to the Note.

COUNT II
In Personam Action Against Mortgagor

11. The plaintiff repeats and reaffirms the allegations set forth in Paragraphs One (1) through Ten (10) of this complaint as if fully reinstated herein.
12. Pursuant to the terms of the Note, the preferred ship mortgages, and the Ship Mortgage Act, the defendant Katherine Beesley is liable for the amount of the outstanding indebtedness on the Note secured by the mortgaged vessel or any deficiency thereof.

WHEREFORE, plaintiff respectfully demands that the Court:

1. Issue process in due form of law, according to the practice of this Honorable Court in matters of admiralty and maritime jurisdiction, against defendant vessel, M/V DEFIANCE and the defendant Katherine Beesley;
2. Cite all persons having or claiming an interest therein to appear and answer this complaint;
3. As to Count I, enter judgment in favor of plaintiff for the full amount due under the Note with interest, costs, and expenses collection, including reasonable attorneys' fees as provided for in the Note, and order the defendant vessel M/V DEFIANCE condemned and sold to pay its debts;
4. As to Count II, enter judgment against the defendant Katherine Beesley individually, and in favor of plaintiff for its damages as aforesaid, including, but not limited to, any outstanding deficiency which may accrue pursuant to the public sale of vessel M/V DEFIANCE, together with interest, costs and reasonable attorneys' fees; and
5. Grant plaintiff such other relief as justice may require.

BANK OF THE WEST

By its attorneys,

A handwritten signature in cursive script, reading "Seth S. Holbrook". The signature is written in dark ink and is positioned above a horizontal line.

Seth S. Holbrook, BBO # 237850

HOLBROOK & MURPHY

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